IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.371 OF 2003

IN

SUMMARY SUIT NO.3550 OF 2003

Vijay Engineering & Machinery Co .. Plaintiff

versus

M/s Firecone Control Systems & anr.. Defendants

Mr. S.N.Fadia for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 23rd February, 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendants. Learned counsel for the plaintiff hands in the affidavit of service sworn by Mr.Anant Mukadam on 9th February, 2005. A perusal of the affidavit shows that the Summons for Judgment was sent to the defendants on two different occasions and on each of the occasion it has been returned with postal endorsement "Intimation". This indicates that

the intimation was delivered to the defendants but they chose not to collect the registered packet. The Summons for Judgment was sent at the very address at which the writ of summons was served on them. Hence, service is accepted as a proper service.

2. Despite service of the Summons for Judgment the defendants have not filed an application for leave to defend nor have they filed any affidavit in reply. In the circumstances, the averments made in the plaint and the Summons for Judgment are deemed to be accepted. The plaintiff is also entitleld to a decree under order 37 Rule 3 (6) (a) of the Code of Civil Procedure.

3. Learned counsel for the plaintiff hands in the original documents under a list. The documents are taken on record and marked Exhibit A. I have perused the original documents and have also gone through the plaint. The documents show that the plaintiff sold supplied and delivered to the defendants goods under invoice dated 5th May, 2001 valued at Rs.54,000/-. The defendant made part payment of Rs.60,000/- and gave a cheque for the balance for Rs.48,000/-. The plaintiff thereafter issued a notice of demand dated

18th May, 2002. The defendant however failed and neglected to make the payment. Hence, the plaintiff has filed the suit. As the defendant issued the cheque which has been dishonoured the plaintiff is entitled to a decree. Interest is claimed under section 80 of the Negotiable Instrument Act. The Summons for Judgment is made absolute. Suit of the plaintiff is decreed in terms of prayer clause of the plaint.

4. Certified copy is expedited.

D.G.KARNIK, J